

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

T.J. and C.J., on behalf of their minor child B.J.

Plaintiffs,

v.

Case No. 12-CV-00565 RB/LFG

Danny Pacheco, et al.

Defendants.

**DEFENDANTS' MOTION FOR ENTRY OF SUMMARY JUDGMENT ON COUNT I OF
PLAINTIFFS' COMPLAINT BASED ON QUALIFIED IMMUNITY
AND MEMORANDUM OF LAW IN SUPPORT**

COME NOW the Defendants, by and through their attorneys, Basham & Basham, P.C. (Katherine A. Basham, Esq.), and hereby move this Court to enter summary judgment in their favor on Count I of the complaint based on the doctrine of qualified immunity. As grounds for this motion, the Defendants state:

1. Defendants filed a Motion for Summary Judgment on Count I of Plaintiffs' Complaint Based on Qualified Immunity on November 9, 2012.
2. A response was due within fourteen days. D.N.M.LR-Civ. 7.4(a). The Defendants agreed to an extension of time for the Plaintiffs to respond to the merits of the motion based on the Plaintiffs' representation that they would be filing a Rule 56(d) affidavit by December 7th, later extended as a professional courtesy to December 14th.
3. Said affidavit was not filed by December 14th.
4. Pursuant to the Federal Rules of Civil Procedure, if a party fails to address a motion, this Court may consider the factual allegations contained in the motion as undisputed and grant summary judgment if the motion and supporting materials (including the facts considered undisputed) show that the movant is entitled to it. Rule 56(e)(2) and (3) of the Federal Rules of Civil Procedure.

5. Defendants' motion for summary judgment and supporting materials show that they are entitled to judgment in their favor on Count I of the complaint.

WHEREFORE, Defendants respectfully request that the Court enter summary judgment in their favor on Count I of the complaint pursuant to the doctrine of qualified immunity.

Respectfully Submitted,
Electronically Filed
/S/ Katherine A. Basham
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of December, 2012, I filed the foregoing pleading electronically through the CM/ECF System, which caused the below counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Shannon Kennedy
The Kennedy Law Firm
1000 Second Street, NW
Albuquerque, New Mexico, 87102

Electronically Filed
/S/ Katherine A. Basham

Mark A. Basham